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Before the
Federal Communications Commission
Washington, D.C. 20554

AUG 1 3 53 PM '05

In the Matter of

DISPATCHED

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Fruit Cove and St. Augustine, Florida)

MB Docket No. 05-244
RM-11257

NOTICE OF PROPOSED RULE MAKING

Adopted: July 27, 2005

Released: July 29, 2005

Comment Date: September 19, 2005

Reply Comment Date: October 4, 2005

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a petition for rule making filed by Renda Broadcasting Corporation of Nevada, ("Petitioner"), licensee of Station WSOS-FM, Channel 231C3, St. Augustine, Florida. Petitioner proposes to reallocate Channel 231C3 from St. Augustine to Fruit Cove, Florida, and modify the license of Station WSOS-FM to reflect the change of community. Petitioner pledges to file an application to implement this reallocation and asserts that it would provide first local service to Fruit Cove.

2. Petitioner filed this proposal for reallocation in accordance with the provisions of Section 1.420(i),¹ which permits the modification of a station's license to specify a new community of license while not affording other interested parties the opportunity to file competing expressions of interest in the proposed allotment.² In considering a reallocation proposal, we compare the existing allotment to the proposed allotment to determine whether the reallocation will result in a preferential arrangement of allotments. This determination is based upon the FM Allotment priorities.³

3. In support of the petition, Petitioner states that its proposal would result in a preferential arrangement of allotments, and meets the requirements for reallocation set forth in *Change of Community R&O*. First, the proposed allotment of Channel 231C3 at Fruit Cove is mutually exclusive with the current use of Channel 231C3 at St. Augustine. Second, St. Augustine will not be deprived of its only local service because it is served by AM Stations WAOC and WFOY, and noncommercial educational FM stations WAYL and WFCF. Third, the proposal would provide a first local service at Fruit Cove (a Census Designated Place with a 2000 U.S. Census population of 16,077 persons) under Priority Three which would result in a preferential arrangement of allotments over the retention of a fifth local service at St. Augustine (with a 2000 U.S. Census population of 11,592 persons) under Priority Four. Although

¹ 47 C.F.R. §1.420(i).

² See *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O")*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990).

³ See *Revision of FM Assignment Policies and Procedures*, 90 FCC2d 88, 91 (1988). The FM Allotment priorities are: (1) first full-time aural service, (2) second full-time aural service, (3) first local service, (4) other public interest matters. [Co-equal weight is given to priorities (2) and (3)].

Fruit Cove, as a Census Designated Place, is presumed to be a community for allotment purposes, that presumption is rebuttal. We invite public comment on this issue.

4. Petitioner states that the reallocation of WSOS-FM to Fruit Cove will result in a predicted net gain in population of 354,459 persons within the proposed 60 dBu contour of the station.⁴ According to the Petitioner, the entire loss area will continue to be well-served by at least 5 other aural services. Petitioner also states that a *Tuck*⁵ analysis is not necessary because WSOS-FM is already located in the St. Augustine Urbanized Area with 74.5% coverage, and that the proposal will significantly reduce WSOS-FM's 70 dBu coverage of an urbanized area from 74.5% of the St. Augustine Urbanized Area to 26.4% of the Jacksonville Urbanized Area.⁶ In any event, the Petitioner has submitted a *Tuck* showing.

5. We believe that the proposal warrants consideration because it would provide Fruit Cove with a first local service without depriving St. Augustine of its sole local service. Channel 231C3 can be allotted to Fruit Cove at coordinates located 30-01-27 North Latitude and 81-36-19 West Longitude with a site restriction of 10.2 kilometers (6.4 miles) south of the community.

6. Accordingly, we seek comment on the proposed amendment of the FM Table of Allotments, Section 73.202(b),⁷ for the communities listed below, to read as follows:

<u>Community</u>	<u>Present</u>	<u>Channel</u>	<u>Proposed</u>
St. Augustine, Florida	231C3		---
Fruit Cove, Florida	---		231C3

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached *Appendix* and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the *Appendix* before a channel will be allotted.

8. Pursuant to Sections 1.415 and 1.419,⁸ interested parties may file comments or counterproposals on or before September 19, 2005, and reply comments on or before October 4, 2005, and are advised to read the *Appendix* for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW, TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on Petitioners' counsel, as follows:

Renda Broadcasting Corporation of Nevada
Mark N. Lipp, Esquire
Vinson & Elkins L.L.P.
1455 Pennsylvania Ave., N.W.
Suite 600

⁴ With regard to WSOS-FM's current facilities, Petitioner states that the "facilities authorized in BPH-20040301AOG have been constructed and a license application to cover [the permit] . . . is currently pending (BLH-20050204AAS). Engineering Exhibit at 2.

⁵ *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988).

⁶ Petitioner cites *Boulder and Lafayette, Colorado*, 12 FCC Rcd 583, 584 (1997).

⁷ 47 C.F.R. § 73.202(b).

⁸ 47 C.F.R. §§ 1.415 and 1.419.

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9. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. **All filings must be addressed to Marlene H. Dortch, Secretary, Federal Communications Commission, Office of the Secretary. Any filing that is not addressed to the Office of the Secretary will be treated as filed on the day it is received in the Office of the Secretary. See 47 C.F.R. Section 1.7. Accordingly, failure to follow the specified requirements may result in the treatment of a filing as untimely.**

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b).⁹ This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. Section 3506(c)(4).

11. For further information concerning this proceeding, contact Helen McLean (202) 418-2738. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a *Notice of Proposed Rule Making* until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any

⁹ See Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Makings to Amend 47 C.F.R. Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules. 46 FR 11549 (Feb. 9, 1981).

comment which has not been served on the petitioners constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief
Audio Division
Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b), and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS PROPOSED TO AMEND the FM Table of Allotments, 47 C.F.R. Section 73.202(b), as set forth in the *Notice of Proposed Rule Making* to which this *Appendix* is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding:

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments (*see* 47 C.F.R. Section 1.420(d).)

(b) Petitions for rule making which conflict with the proposals in this *Notice* will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; service. Pursuant to applicable procedures set out in 47 C.F.R. Sections 1.415 and 1.420, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. The person filing the comments shall serve comments on the petitioners. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. A certificate of service shall accompany such comments and reply comments (*see* 47 C.F.R. Section 1.420(a), (b) and (c).) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of 47 C.F.R. Section 1.420, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center, at its headquarters, 445 12th Street, S.W., Washington, D.C.